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ABSTRACT

Purpose of this bulletin is to inform teachers and other school staff about new requirements, effective in 1975-75, for all Bureau of Indian Affairs (BIA) and tribal-contract schools to develop curriculum units relating to citizenship training and/or student rights and responsibilities in all grades K through post-secondary. Intended primarily for use by classroom teachers, these curriculum requirements are closely related to new administrative policies to assure: (1) due process for all students accused of serious infractions and (2) student participation in rule-making relating to student rights and responsibilities. To provide perspective, the historical background of the new BIA policies is summarized. This background is shown to be related to the current nationwide movement to improve the teaching of U.S. Government and the underlying concepts of fairness, justice, and democracy. Two case studies are given to offer additional suggestions, worked out as specific examples. (Author/NQ)

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Guidelines for Teaching Concepts of Fairness, Justice and Democracy in BIA and Tribal-Contract Schools

A Curriculum Bulletin

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CONTENTS

Introduction iii
Acknowledgments iv

I. BACKGROUND: THE NEW STRESS ON FAIRNESS, JUSTICE AND DEMOCRACY IN THE SCHOOLS 1
A. Indicators of Social Disarray 1
B. Court Decisions on Student Rights 1
C. The Courts on Student Responsibilities 2
D. Criticism of Courses on U.S. Government 3
E. Criticism of School Governance 3

II. IMPACT ON BIA AND TRIBAL CONTRACT SCHOOLS 4
A. Federal Regulations on Student Rights 4
1. Individual rights and due process 4
2. Privacy rights of parents and students 5
B. BIA Manual Provisions 6
1. Student responsibilities 6
2. Due process 6
3. Curriculum changes 6

III. DEVELOPING NEW CURRICULUM MATERIALS 7
A. Curriculum Content Categories 7
1. Due process 7
2. Content of the law 8
3. Basic concepts: freedom, justice, democracy 8
B. Grade Levels 9
1. Kindergarten and primary curriculum 9
2. Required courses on U.S. Government 9
C. Cognitive and Affective Instructional Objectives 9
1. Cognitive methods and applications 9
2. Affective goals for citizenship training 10
3. Inquiry method in citizenship training 10
4. Evaluation of inquiry 11
D. Teacher Training 11
E. Example: The Right to Remain Silent 12
F. Indian-interest Material 13

IV. CASE STUDIES 15
A. Due Process: School "A" 15
1. The problem 15
2. Results 15
3. Management style 16
4. Objectives and methods 16
5. Due process 17
6. Learning the rules 18
7. Legal training 18
8. Staff reactions 18
9. Student learning in the system 19
B. Tribal Government Course: School "B" 19
1. The law and civil rights in class 19
2. Inquiry method 19
3. Due process 20
4. Student involvement 21

V. A FINAL WORD TO TEACHERS 22

VI. SOURCES 23

00004

INTRODUCTION

This bulletin is intended to inform teachers and other school staff about new requirements, effective in 1974-75, for all BIA and tribal-contract schools to develop curriculum units relating to citizenship training and/or student rights and responsibilities in all grades K through post-secondary.

These curriculum requirements are closely related to new administrative policies to assure due process for all students accused of serious infractions, and to assure student participation in rule-making relating to student rights and responsibilities.

To provide perspective, the historical background of the new BIA policies is summarized. This background is shown to be related to the current nationwide movement to improve the teaching of U.S. Government and the underlying concepts of fairness, justice, and democracy.

The background material will make clear the vast scale and potential sweeping impact of these changes. We stress, therefore, a basic rule for using this bulletin: if you will be dealing with these materials for the first time, you should generally plan to select and introduce to your students this year, only one or at the most a few highly specific new curriculum units, to occupy no more than a few days of instructional time. The units selected should serve as foundations for additional changes in subsequent years.

This bulletin provides suggestions, examples, and methods for making informed, useful choices in these vital areas.

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George W. Underwood Research and Evaluation, Inc. produced this bulletin, and is responsible for its content. With the Underwood organization, Dr. Paul R. Streiff organized the June Workshop and Paul M. Sears wrote the bulletin.

00006

I.
BACKGROUND: THE NEW STRESS ON FAIRNESS, JUSTICE, AND DEMOCRACY IN THE SCHOOLS

A. INDICATORS OF SOCIAL DISARRAY

Surveys in recent years have shown that disturbingly high percentages of American citizens hold negative attitudes toward our Constitutional Bill of Rights (NYT: 1970). During these years voter participation in elections has declined, juvenile crime has increased, and we have seen growing evidence of the alienation of youth from the basic goals of our free society. One result has been widespread dissatisfaction with the schools, even though it is clearly unreasonable to hold the schools responsible for all these gathering social ills.

B. COURT DECISIONS ON STUDENT RIGHTS

The public still looks to the schools, however, for leadership in resolving these disturbing problems. Increasingly, the courts have been opening the way for the schools to assert such leadership. Some of the resulting "gains" may have appeared at first to be set-backs for school administrators. Until quite recently, for example, most school officials set the standards in their schools for student dress, hair length, and conduct. They determined what would go into student records and who could see the records. They censored or otherwise controlled student publications. They determined what courses would be offered, and the specific content of the courses. They handled student discipline on the basis of what they themselves considered to be fair and just treatment.

School officials did these things "naturally" and, we can safely say, nearly always with good intent. One result of the social disarray of recent years, however, has been agitation for change regarding civil rights and liberties. The courts have been applying some of

these emerging views in ways that affect the schools, directly or indirectly.

In 1967, the U.S. Supreme Court decision in the Gault case struck at the paternalism of the juvenile justice system, holding that some of the due process rights afforded to adults under the Bill of Rights must also be afforded to juveniles.

Later decisions began to extend this principle to the schools. Thus, in the 1969 Tinker decision the Court stated: "It can hardly be argued that either teachers or students shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Other decisions in state and federal courts have held that students may conduct peaceable demonstrations on school property, may publish school newspapers generally free of censorship by school officials, and may distribute underground papers on school property.

In 1971, the Supreme Court declined to review cases concerning student dress and grooming codes, on the ground that such issues were too trivial for its consideration. That meant that dress-code suits would be settled in state courts or in lower federal courts when addressing constitutional issues. Indeed, a state court in Oklahoma soon thereafter held that American Indian students have the right to wear their native dress and hair styles in the public schools of that state.

In the 1975 Goss decision the Supreme Court held that the school code of the state of Ohio violated student constitutional rights by failing to provide due process that would allow students to present their versions of events in disciplinary matters.

C. THE COURTS ON STUDENT RESPONSIBILITIES

Court decisions expanding student rights have generally affirmed corresponding student responsibilities, particularly to maintain order and decorum so that the schools can fulfill their educational mission. The courts, in effect, require students to collaborate with the schools in exercising their rights. Protest is allowed, disruptive protest is not. Ideas and opinions may be freely expressed in student newspapers, but the content cannot be libelous, obscene, or calculated to disrupt decorum in the schools. In localities where due process is an established right, as in Ohio since the Goss decision, due process must of course be provided. But by its very nature, due process demands that, if the student participates, he will do so according to the rules.

D. CRITICISM OF COURSES ON U.S. GOVERNMENT

Concerned citizens view the effective exercise of student rights as being closely bound up with the curriculum itself. Much of the criticism of the schools has, therefore, focused on required courses in U.S. Government as an obvious target. The American Bar Association has recently labelled these courses "failures," asserting that they leave students "uninformed, cynical, and nonanalytical . . . students are alienated both by the method of learning — read and regurgitate — and by the content — platitudes, blind optimism, chauvinism, and descriptions of what should be rather than what is." The ABA adds that such courses "present a romantic myth of the American legal system, in which the ideals of Democracy are confused with the realities of politics." (ABA: 1975a).

E. CRITICISM OF SCHOOL GOVERNANCE

The American Bar Association is equally pointed in asserting that school administrators should make basic changes in their current methods of discipline, as an essential step in improving the citizenship curriculum: "A majority of high school students perceive their schools to be essentially undemocratic institutions" . . . yet "the teaching of justice in the schools requires just schools." Furthermore, "students are more likely to be convinced by their school experiences than their course work." Therefore administrators should use "the day-to-day operation of the school itself to teach students about even-handed conflict resolution, due process, and other components of a just legal system." Students should "be permitted to take part in the school's rule-making and enforcing process," and changes in the school's own legal system should "be implemented with the full cooperation of administrators, students and faculty." (ABA: 1975a).

II.
IMPACT ON BIA AND TRIBAL-CONTRACT SCHOOLS

A. FEDERAL REGULATIONS ON STUDENT RIGHTS

At this point we may, perhaps, be grateful that federal regulations (25 CFR Part 35) have at least put an end to the debate over student rights as far as BIA and tribal-contract schools are concerned, with a clear directive to do essentially what the ABA is recommending. In principle, these schools are now substantially ahead of most other school systems in the country in protecting student rights. The problem is no longer what to do, but how best to get it done.

To allay a commonly expressed fear, nothing in the required changes is going to result in "the students taking over the schools." The new regulations provide that students will have a reasonable amount of say in operation of the schools, commensurate with the knowledge and abilities to be expected in their age groups.

1. Individual rights and due process

Part 35, title 25, Code of Federal Regulations (CFR), on student rights and due process procedures, was established October 11, 1974, to apply to all BIA and tribal-contract schools. In particular, part 35.3 states that students in these schools have the following rights:

a. The right to an education.

b. The right to be free from unreasonable search and seizure of their person and property, to a reasonable degree of privacy, and to a safe and secure environment.

c. The right to make his or her own decisions where applicable.

d. The right to freedom of religion and culture.

e. The right to freedom of speech and expression, including symbolic expression, such as display of buttons, posters, choice of dress, and length of hair, so long as the symbolic expression does not unreasonably and in fact disrupt the educational process or

endanger the health and safety of the student or others.

f. The right to freedom of the press, except where material in student publications is libelous, slanderous, or obscene.

g. The right to peaceably assemble and to petition the redress of grievances.

h. The right to freedom from discrimination.

i. The right to due process. Every student is entitled to due process in every instance of disciplinary action for alleged violation of school regulations for which the student may be subjected to penalties of suspension, expulsion, or transfer.

CFR 35.4 elaborates on due process, providing for written notice of charges prior to a hearing, the right to a fair and impartial hearing, the right to counsel of the student's choice and to have his or her parents present, the right to produce witnesses and to examine all witnesses, the right to a record of the hearing and to appeal, the right not to be made to testify against oneself, and the right to have all records of the allegations removed from one's file if one is acquitted.

2. Privacy rights of parents and students

In 1974 Congress adopted three acts which affect the right of access to and control over student records. These are the Buckley Amendment to the General Education Provisions Act, the Freedom of Information Act, and the Privacy Act. The Buckley Amendment applies to schools receiving federal funds, and provides for confidentiality of student records and student (or parental) control over their release. The Freedom of Information Act, which is chiefly concerned with the public's right of access to federal information generally, does contain some exceptions which would appear to greatly limit public access to student records. The Privacy Act is concerned with protecting the citizen's right to privacy with respect to records the government keeps on individuals, and establishes safeguards against improper use of such information by government agencies.

Early in 1975 the Department of Health, Education and Welfare proposed regulations (45 CFR) to assure compliance with the Buckley Amendment. These regulations, when formalized, may have application to many BIA and tribal-contract schools.

The Buckley Amendment, the Freedom of Information Act, and the Privacy Act all present practical problems of record-keeping which educators and lawyers are only beginning to tackle. Within the BIA a task force is drafting proposed regulations which, it is expected, will be in harmony with each of these acts.

B. BIA POLICY PROVISIONS

1. Student responsibilities

62 BIAM 9.7 states that students have obligations to obtain an education, to follow the school rules, to practice self-control, and to know the school's grievance procedures and to use them in making complaints.

2. Due process

Current BIA policy on the Student Rights and Responsibilities program requires each school to develop and implement its own code of student conduct, with provisions for due process in disciplinary hearings. In this context "due process" does not imply the full array of legal safeguards that constitute due process in criminal trials, but simply concerns reasonable and fair procedures for managing conflict and resolving disputes involving the students and the school. In both instances, however, the elements of due process derive from the same source: the Bill of Rights of the U.S. Constitution.

BIA policy also requires that students be given a voice in the development of rules relating to student rights and responsibilities in each school.

By August 8, 1975, in compliance with this policy, 150 of the 217 BIA and tribal-contract schools had already filed drafts of their proposed codes for review with the Commissioner of Indian Affairs.

3. Curriculum changes

Bureauwide objectives require each school to develop an appropriate curriculum in citizenship training and/or in Student Rights and Responsibilities. Details of what to teach and how to teach it are deliberately not specified in the objectives, and are the province of the area offices and the individual schools.

III.
DEVELOPING NEW CURRICULUM MATERIALS

A. CURRICULUM CONTENT CATEGORIES

Law-related curriculum materials that may be considered for BIA and tribal-contract schools fall into three logical categories: (1) factual elements of due process, (2) specific content of the law in various areas, and (3) basic concepts related to our Constitutional system. In this bulletin we consider these basic concepts to be "freedom," "justice," and "democracy."

1. Due process

The formal written rules for due process developed for any school will usually occupy only a few paragraphs or, at most, a few pages. To meet administrative requirements, students must be given copies of the rules, and be required to read them at the start of school before classes begin.

A curriculum unit could easily be designed to review these rules in class. The unit should not, however, involve only "review" but should also get into application. The reason is simply that effective learning of due process depends on practice rather than on conventional classroom instruction.

Practice can relate to hearings of actual charges of violations of the rules, but under many school codes these may be kept private at the request of the accused. Practice can involve dramatization, where students enact due process situations or can readily identify with the actors. Practice can also include field assignments as in courtrooms, by prior arrangement with a judge.

One BIA administrator, by now highly experienced in the application of due process in his school, feels that the single most effective aid that could be devised for "teaching" due process would be a dramatization consisting of a film designed "to show all the wrong ways of conducting a hearing, and then the right way."

2. Content of the law

Lawyers are repeatedly appalled at laymen's ignorance of the law: a pervasive ignorance that often seems to threaten individual well-being and even survival. In a nationwide survey the American Bar Association found that some 25% of law-related studies that were offered in the public schools included or stressed four specific areas of the law: juvenile law, criminal law, consumer law, and law enforcement.

The BIA Workshop, which was organized to provide background for this bulletin, produced several dozen other specific topic suggestions, which could be grouped under a few general categories, including the four noted above.

The question whether to teach even limited "useful" aspects of content of the law is in deep controversy. Many lawyers and a good many teachers interested in "consumer" and "survival" courses would add at least some content of the law to the highschool curriculum. Critics reply that highschool level legal-content courses are all too often poorly taught, that they usually add up to futile efforts to make "little lawyers" out of the students, and that they make it easy to evade the difficult problems of student inquiry into the elements of freedom, justice, and democracy which are the basis of responsible citizenship.

This bulletin takes the view that teachers in BIA and tribal-contract schools should be free to teach content of the law, but that each such curriculum unit should be justified with some reference to the main points of this controversy. Support for such studies should be demonstrated by school boards, tribal officials, and students themselves. Content-of-the-law materials should not ordinarily be used to satisfy the Bureauwide Objectives for new curricula in citizenship training and/or student rights and responsibilities.

The charges of poor teaching of law-content amount to charges of inadequate teacher preparation. The answer must lie in in service training and/or the enlistment of experts such as practicing lawyers, judges, or law-enforcement officials to conduct one or more sessions of the class.

3. Basic concepts: freedom, justice, democracy

In contrast to due process and law-content studies, there is little question that it would be desirable to turn required courses in U.S. Government into lively exploration by students of our Constitutional rights and responsibilities as they apply in real life. Concepts of freedom, justice, and democracy are basic to our society, and teachers face a nice challenge in designing effective curriculum units and instructional methods around such concepts.

(The Law in a Free Society project has designed a widely commended and thoroughly conceptualized teacher training program around a set of eight topics: Freedom, Justice, Privacy, Participation, Diversity, Authority, Property, and Responsibility. The common ground with the concepts used here will be evident to the reader. Other topic-lists can easily be developed around the same common ground.)

B. GRADE LEVELS

1. Kindergarten and primary curriculum

Recent advances in early childhood education have established the importance of lifetime attitudinal and concept formation in pre-school and elementary ages. We conclude that concepts of freedom, justice, and democracy should be taught in all grade levels, beginning with kindergarten. Experience in the Law in a Free Society project indicates that these or related concepts can be translated quite effectively for instructional purposes to elementary and pre-school levels.

2. Required courses in U.S. Government

Criticisms of existing courses in U.S. Government have been summarized above. BIA and tribal-contract schools follow state requirements, and each state does in fact require a course in U.S. Government for high school graduation. These courses offer the obvious starting point for integrating improved methods of citizenship training into the secondary curriculum.

C. COGNITIVE AND AFFECTIVE INSTRUCTIONAL OBJECTIVES

1. Cognitive methods and applications

In recent years curriculum design for cognitive learning areas has been systematically developed under leaders such as W. James Popham (Popham and Baker: 1970; Popham: 1971). Popham demands careful definition of desired *learning outcomes* in terms of student behavioral change.

The tentative learning objectives are modified in the light of *pre-assessment* of interests and abilities of the class. The teacher or curriculum designer then selects *learning activities* that seem best designed to help the students achieve the desired behavioral objectives. Finally, the instructional effort is *evaluated* by post-instructional measurement (where possible) or observation of student behavior in relation to the desired outcome.

This method will have important application in designing curriculum materials dealing with specific content of the law.

The method will also be of value in remedying the defects of content in present courses in U.S. Government. As we shall see in the following section, however, the deficiencies of these courses probably cannot be resolved by *only* improving their cognitive content.

2. Affective goals for citizenship training

Most educators and other concerned citizens would agree that the desired outcome of teaching efforts relating to concepts such as freedom, justice, and democracy will be positive changes in student values or attitudes. These desired changes will be extremely difficult to define in measurable terms and even when so defined measurement alone may not be the most important indicator of effectiveness. Attitude-changes cannot even be taught directly, but must materialize as a by-product or side-effect of some kind of instructional program.

3. Inquiry method in citizenship training

We have seen that school administrators must observe the rules of fairness, justice, and democracy if their students are to develop respect for those values. The same principle applies to education for citizenship training, and places special burdens on the teacher. It has already been suggested that traditional classroom activities such as textbook assignments, lectures, and tests on the material covered are likely to be ineffective as learning activities in citizenship training.

The problem is to get the students actively involved. Educators grappling with this challenge refer with striking frequency to "the real world," meaning the world beyond the schoolhouse walls. They would like to get students out of the classroom, into that real world, as the best setting for learning experiences in citizenship training. The teacher who adopts field assignments as a learning activity incurs difficult obligations for planning and supervising such activities. The easy way out — one-day conducted tours of courts, probation offices, or the like — has proven ineffective. Students must pursue field assignments as part of a systematic inquiry into some subject. And inquiry begins in the classroom.

The inquiry method itself is the subject of extensive and detailed teacher training programs. In essence the method requires the teacher to remain in control of the class, but to relinquish the position of traditional authority in the classroom as the person who knows and can provide the answers sought or needed by the class.

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The nature of inquiry is to stimulate student investigation of many pertinent aspects of some important topic, without expecting or worrying about any definitive answers. If class inquiry reveals, for example, that some basic question of justice is exceedingly complex and may be impossible to decide to everyone's satisfaction, then that exercise in inquiry should generally be deemed "successful" in terms of the inquiry method.

The requirements on the teacher in presiding over inquiry are to: (1) open the field for student discussion and investigation, within some defined limits of subject matter. (2) Convince the class that any opinion, however extreme but short of verbal assault or obscenity, will be tolerated and considered on its merits. (3) Refrain absolutely from stating the teacher's conclusions, either of fact or opinion. (4) Encourage students to seek information outside the class, to test their own opinions and to strengthen their arguments if possible.

The last requirement implies that an exercise in inquiry will cover at least two class periods.

4. Evaluation of inquiry

Measurement seems inappropriate for evaluating inquiry-centered citizenship training, where the goals are primarily affective. Observation and interpretation by the class itself, and by outsiders, may offer the best evaluative approach. The present inability to measure results should not be used as a reason to avoid making some use of the inquiry method.

Educators involved with the inquiry method have experimented with attitudinal questionnaires as evaluative tools for pre- and post-testing, or with test and control groups. They warn that such testing is not valid for evaluation, but note that the results may often be stimulating and helpful to the teacher.

D. TEACHER TRAINING

In-service training is valuable, and often essential, in developing curriculum units in freedom, justice, and democracy. Training for these subjects can involve specific content of the law, and also development of skills in the inquiry method through which the teacher helps students analyze specific problems and arrive at more reasoned opinions about them.

Teacher training for such wide-ranging subject matter should be inter-disciplinary. It may involve specialists such as lawyers, probation officers, juvenile court judges, state and federal judges, law professors, prosecutors and public defenders, political

scientists, and philosophers. For these experts to be effective in teacher training, they must be trained themselves. They must be prepared, that is, to meet the needs of teachers for instructional strategies and content materials suitable for their classes.

BIA and tribal-contract schools may seek help in teacher training from the staff of the Solicitor's Office, Department of the Interior, which includes lawyers interested in and informed about student rights and law-related studies. State and local bar associations and lawyers for tribal governments may also provide valuable assistance. Clinical law programs may sometimes be arranged in collaboration with the Solicitor's Office. In these programs law students receive academic credit or payment for teaching law-related materials to teachers and school administrators.

Section VI of this bulletin lists nationwide dissemination projects which conduct teacher training programs, or which can provide information on local programs.

E. EXAMPLE: THE RIGHT TO REMAIN SILENT

Laymen gain a great deal of their "understanding" of both law and medicine from television and other media. In the medical field the American Academy of Family Physicians has developed a working relationship with the Dr. Welby TV series that involves the Academy in script preparation, and gives the series in return an Academy "seal of approval." The bar associations have had no such luck with the police-and-crime series that dominate much of television entertainment. Lawyers consider TV a veritable fountain of misinformation about their profession, with content of the law consistently distorted for dramatic effect.

They cite, for example, television treatment of the right of an accused to remain silent. The right itself stems directly from Article V of the Bill of Rights: "No person shall be . . . compelled in any criminal case to be a witness against himself . . ." a profound statement for anyone concerned with preservation of our Constitutional rights.

In television dramas, police typically make an arrest, read the accused his rights, including the right to remain silent, and then proceed to question the arrested person, and to extract replies, at length. One lawyer at the BIA Workshop asked, "Can anyone give me one example from a television series where an accused actually exercised his Constitutional right to remain silent?"

If a teacher decides to design a curriculum unit on the criminal law, the material might occupy two or three days or even a week of a social studies class. It would almost certainly cover the basic

Constitutional guarantees, including the right of an accused to remain silent.

The Constitution takes fifteen words to affirm that right, and the usual prosecution formula adds eight more words: "anything you say may be used against you." The trivial verbal content scarcely merits formal testing, but the tremendous social and political implications clearly merit much effort in the form of student inquiry.

Evaluation possibilities become intriguing: the most significant test might be whether students, any time after completing the curriculum element, assert their constitutional right if they are actually arrested, and do remain silent, at least until they confer with a lawyer. Easier, but less convincing, evaluation methods can be devised, including post-instructional dramatizations.

The teacher may find narrative materials — fiction or factual — in which a strong-minded and well-informed suspect does exercise his right to remain silent. These materials might further depict the realistic frustrations of the arresting officers.

If narrative materials are lacking, the teacher might consider specifying in the instructional objective that each student will write such a narrative. (In an inquiry approach to instruction, it might be necessary for the class to agree to accept that requirement, or otherwise not to impose it.)

The teacher may turn to lawyers or the police, or both, for information and interpretation. Fortunate teachers may find police officers who are willing to admit their frustrations when confronted with a silent suspect, the crucial role of lawyers in helping suspects exercise their Constitutional rights, and the resulting demand on the police themselves for more highly professional work in preparing a case, particularly in securing evidence from sources other than the suspect, that will stand up in court.

F. INDIAN-INTEREST MATERIAL

The BIA Workshop held to provide background for this bulletin produced many specific topic suggestions of potential interest to Indian students. Some of these are:

Indian Civil Rights Act
federal Indian law in general
Termination and Self-Determination
treaties with Indian tribes

traditional tribal law
tribal governments, past and present
protection of reservation environments
leases of tribal real property
Indian water rights
prejudice as it affects Indians
rights of urban Indians
equal employment opportunity for Indians

The case-studies which follow in Section IV offer additional suggestions, worked out as specific examples.

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IV.
CASE STUDIES

A. DUE PROCESS: SCHOOL "A"

1. The problem

In 1971 one BIA boarding school, which we will refer to here as "School A," was in serious trouble. Student learning achievement was steadily dropping. Vandalism of school property was a serious and growing problem. Window replacements, for example, were costing nearly $7,000 a year, and vandalized doors were even more costly. In the terminology of the student rights movement, the students at School A were being denied the opportunity to a quality education.

On direction of the School Board, a new management group consisting of Superintendent, Principal and Pupil Personnel Director set up a management by objectives system as the basis for bringing about the obviously needed administrative and academic reforms.

2. Results

In four years the reforms have produced impressive results. Last year School A had to replace just one pane of broken glass, and one broken door. When the new management group took over, an average of three fire alarms were being pulled each school day; last year there were two such alarms all year. The school had been averaging 260 tardies per day; now that figure is down to eight. Dropouts have been cut from 43% to 23% per year.

In 1974-75 educational achievement, as measured by normative tests, showed average pupil gains of about 1.5 years of learning achievement per school year. Gains at those rates cannot continue indefinitely, of course; they have been high in the short run because many pupils were functioning at extremely low achievement rates.

3. Management style

In his approach to management the Principal of School A is an activist, not just dropping into classrooms but sometimes staying through entire classes to monitor teacher performance (and following up privately with corrective action). Since he is seldom in his office during school hours, he makes appointments with staff and students on the run: "Fine, stop me next time you see me in the halls and we'll talk about it."

This kind of approach, as experienced staff members know, can be stifling or liberating, depending on the Principal's abilities and personality. At School A it is clearly productive. The Principal's drive to be involved is accompanied by a concern for orderly procedures and fair play. His appointment came at the opportune time to apply the lessons and spirit of the student rights movement in making changes he felt were essential to improve the school. The Superintendent has backed him fully, allowing staff and students to experiment to make necessary changes.

4. Objectives and methods

The staff instituted diagnostic prescriptive teaching methods. All new students are tested and evaluated. Those who are too far behind are placed in the school's Basic Skills Unit; last year this Unit included some 90 of the school's 500 students. The Unit provides half-days of instruction in reading, mathematics, and social survival skills, including law-related topics. The other half-day is devoted to specific vocational skills.

Students move out of this Unit whenever their achievement permits, into the regular school, which is competency-based and designed for college or vocational preparation. If a student does not improve, the staff changes his program.

Each student, whether in Basic Skills or regular school, has a daily goal he must achieve before he is dismissed for that day. For freshmen, these demands are reinforced by a reward system, by which the students are paid cash up to a total of 90 cents a day, to be at class on time, to complete assigned work, and to achieve quality work. The total cost of this reward system is approximately $8,000 per year, far less than the former cost of school vandalism. The Principal acknowledges the well-known criticisms of reward systems, but simply says the system has been highly effective at School A, where many entering students have missed so much school that they appear to be "hopelessly" behind.

The administration drops the cash rewards after the first year, telling sophomores that now they have it together and are expected

to perform just as well or better from their own personal motivation.

The atmosphere at School A is designed to reinforce positive student motivation. Students qualify for the Honor Dorm Society, for example, if they go three weeks with no infractions in class or dormitory. About half the students belong, and "once in, they tend to stay the rest of the year." Members can sign themselves out to go to town for shopping or entertainment from 4:00 P.M. until 10:00 P.M. They may move into the Honor Dorm, and can decorate their own rooms as they please, can check themselves out for weekend outings, do not have to report for make-up or tardies each day, and have more options for elective course work.

5. Due process

The other side of this coin involves infractions and how they are handled. No student can be disciplined without a formal, written charge and a formal hearing. At first, in the interest of being systematic, the Principal required any academic staff member making a charge against a student to file it within 12 hours of the alleged event. One of the few changes he has made in the hearing procedure is to require a waiting period of 12 hours after evidence is gathered.

"A formal hearing is serious business," the Principal says. "Staff members learn they must follow the rules, and they can lose cases, particularly if they are not properly prepared. With a waiting period and thinking it through, a lot of charges that might be filed in the heat of the moment just aren't filed. What we want at the hearings are the serious charges, and those are pretty much the ones that are being filed."

When a student is charged for a first or second offense, the charges are made by the Pupil Personnel Director. If the student elects to plead not guilty (appeals decision), he appears before the student council, which consists of 26 members (5% of the student body). The first ten members of any one tribe are represented by one council member, and the next 20 members thereafter by one vote. A panel of the council drawn from the dormitory or the school hears the case and recommends action to the Principal and the Pupil Personnel Director.

If their decision does not resolve the complaint, it goes to the campus appeal committee for review and possible hearing. All third offenses and all offenses which could lead to expulsion go directly through the hearing process.

The judge at School A happens to be the athletic director, who has acquired good knowledge of procedure and a reputation for fairness. Juries consist of four members, two staff and two students,

selected by the judge. Jury members cannot be from the same tribe as the accused, nor from any tribe with a standing grievance against the tribe of the accused.

The accused student can defend himself, although this is strongly discouraged, or he can ask any student or staff member to act as his attorney. The court furnishes the attorneys for the prosecution and defense with copies of the formal charges, in advance of the hearing.

The hearing follows simple, standard rules of due process: the charges are presented, the accused has the right to cross-examine prosecution witnesses and summon witnesses on his own behalf. The judge votes with the jury, and a 3-2 vote is sufficient to acquit or convict. A student can appeal an adverse decision through regular channels, including the federal courts.

6. Learning the rules

Students and staff quickly find they must know the rules and procedures of due process; otherwise they stand at an immediate disadvantage in relation to the system. As a minimum step, during the first week of school the staff provides all new students with copies of the student body constitution, which includes the provisions for due process and the behavior code.

The students are required to read this document, and to agree to abide by its provisions. In so agreeing, the students do not exactly sign a blank check: they may not like the rules later in actual practice, and so the procedures for changing the rules by democratic action are explained to them.

The constitution and rules were not created by the staff and handed to the student body; the process took nearly two years, and involved full student participation from the start. Now that model constitutions and conduct codes are widely available (ERS: 1975), School A's administrators feel this start-up time might be reduced somewhat, but they warn that if student participation is to be effective, it cannot be rushed.

7. Legal training

The Principal's experience with this system has convinced him that "you have to have a good judge, who is well-trained, and permanent in that position." The judge at School A acquired his knowledge of due process from a local lawyer who volunteered his services for training.

8. Staff reactions

At first, some staff members saw the start of due process at School A as a direct threat to their authority. One staff member, in

00924

filing charges, commented, "If this student isn't convicted, I'm going to resign." Part of the Principal's job has been to guide his staff away from such polarized and immature attitudes. Due process has, indeed, put staff members under stress: "The staff has learned that they have to be prepared to lose cases sometimes. They've also learned that they had better master the rules of due process if they are going to file charges, otherwise they will lose on purely procedural grounds."

To help in the learning process, the Superintendent set a policy that the two staff positions on each jury trial would be rotated. As a result, many staff members who had never filed charges saw due process in action for the first time. They immediately became more systematic and, the Superintendent feels, more fair-minded in their approach to discipline problems.

9. Student learning in the system

Students must, indeed, read the rules in advance, but the hearings themselves provide the true learning situations. Some witnesses have found that, if they can get several other students to lie on the witness stand, they can beat the system and win their case. The administration doesn't like to see that happen, but also feels it is not out of hand: "Beating the system is part of the system, and they'll find it's that way when they get out of school, too. You still encourage students to work out the fairest system possible, and to change it democratically to keep it fair."

B. TRIBAL GOVERNMENT COURSE: SCHOOL "B"

1. The law and civil rights in class

One highly motivated social studies teacher in BIA boarding school B first offered a one-semester course in Indian Tribal Government in the 1972-73 school year. The course treats the history and operations of the BIA and other federal agencies important to Indian tribes, and touches on a number of concepts of particular concern to Indian students, including Indian civil rights. Much of the specific subject matter, however, is provided by the students themselves. Students are encouraged to use the inquiry method, while the teacher sets the rules of discussion and offers guidance to sources.

2. Inquiry method

This teacher welcomes controversial topics, and takes pains to inform himself on details when such topics come up. One Hopi student, for example, brought up the Hopi-Navajo land dispute, a

topic certain to be inflammatory in virtually any class including Indian high school students from the Southwest.

School B subscribes to many tribal newspapers, including the *Navajo Times*, and to unofficial papers that present Hopi views. The teacher had kept informed on this controversy through other sources, as well. He was aware of the complexity of the problem, which had been occupying a number of officials of both tribes, government officials, and attorneys virtually full-time.

The teacher was careful, in this as in other legal problems that come up in class, not to suggest answers. "If I did that, I'd lose the confidence of the students immediately." Instead, he suggested sources and invited students to dig into historical background, present status of the dispute, and possible grounds for resolving it.

One student asked a question about currently pending negotiations in the dispute. "Why don't you phone your tribal chairman about that?" suggested the teacher. The student did; as a result, a representative of his tribe showed up at the school a few days later, to find out just what the students were being taught.

School B has become accustomed to visits from tribal officials, and welcomes them as evidence that the school is dealing with issues of basic concern to Indian people. The school also uses the visits to extend the inquiry method: "When we get tribal officials visiting like that, we don't waste the occasion. Before they leave, they will not only address the students in the Tribal Government class, they also address all students in our social studies classes."

In discussing the Hopi-Navajo land dispute, students explored possible results of different settlements. If certain areas were agreed to be Hopi land, for example, what might happen to Navajo families now living there? What would be fair treatment for those families? What costs would be involved? How should the costs be allocated? Could the two tribes prevent or diminish future disputes after a settlement, by fencing the boundary? How would the costs of fencing be allocated? Students learn from such inquiry that answers are not easy, solutions will quite likely be imperfect at best in complicated cases, and will require compromise from both sides.

3. Due process

Due process for students was instituted at School B in the fall of 1970. During the first week of school all students must read the school student code of conduct. As usual under such codes, when a student is charged with a violation he has full rights to a copy of the written charges, to be informed in advance of all evidence against him, a guarantee that no new evidence will be introduced after his hearing begins, the right to confront his accusers and to

00926

cross-examine them, the right not to incriminate himself, and the right to appeal an adverse decision. A student subject to a hearing can pick anyone he wants as his counsel.

As at School A, when the code was put into effect and it became clear that students had gained the right to challenge staff statements, some staff members felt their authority was being undermined. It has required several years for the new system to get into full operation, but School B now points to positive gains, which the administration feels far outweigh the stresses on the staff.

When students found that due process really did provide them fair and equal treatment, violations of the student conduct code began to diminish. Since verbal charges were no longer acceptable and students had the right of rebuttal, both staff and students began to keep detailed records of points in dispute.

The Superintendent soon decided that some type of legal training would be essential for all participants if the school's due process system was to work effectively: "We felt confident enough as laymen that we understood fair play. But when it becomes a point of law — as it always does in a student hearing — then we need to know legal procedures and rules for determining if one person's point of view is really the truth, and if he can back it up in a way that would satisfy a court of law. We need continuing in-service training by lawyers and judges, and that training has to affect both course content and due process in running the school."

As one step to meet these needs, last year the Superintendent approached local judges to ask if his students could attend court sessions. The judges were highly receptive, requiring only that the students maintain complete order in the courtroom, as all spectators must do.

4. Student involvement

Students at School B took part in writing the student body constitution and code of conduct, and they are familiar with the amendment process. They are also involved in curriculum design: each meeting of the school's curriculum committee is announced over the PA system, and any student can attend the meeting. At each school board meeting the student council president or vice-president may sit in, and will then report to the council.

V.
A FINAL WORD TO TEACHERS

The requirements, suggestions and examples presented in this bulletin will be useful for all school personnel, but the material is intended primarily for use by classroom teachers. You are the people who have daily influential contact with Indian students. You can develop and provide for them the potentially rich benefits of improved citizenship training.

This challenge is particularly exciting because Indian students are involved — and will be, throughout their lifetimes — in many special relationships with the law. In their native communities they will be part of the traditional systems of justice of their people. As American citizens they need to deal with all aspects of the law that affect our entire society.

To make the most effective use of the materials and concepts presented here, it is suggested that you examine and review carefully the learning experiences you are currently providing your students concerning freedom, justice and democracy. As proposed in the Introduction to this bulletin, the changes you will make this year will usually be modest in scope. It becomes even more important, therefore, that you design those changes carefully, to offer vivid, effective learning experiences for your students. From that beginning you can develop more ambitious curriculum units in later years.

0098

VI.
SOURCES

A. DISSEMINATION PROJECTS OF NATIONAL SCOPE

ABA Special Committee on Youth Education for Citizenship
Norman Gross, Staff Director
American Bar Association
1155 East 60th Street
Chicago, Ill. 60637 (312) 493-0533

Law in American Society Foundation
Robert H. Ratcliffe, Executive Director
33 North LaSalle Street
Chicago, Ill. 60602 (312) 346-0963

Law in a Free Society
Charles N. Quigley, Executive Director
606 Wilshire Boulevard, Suite 600
Santa Monica, Calif. 9040 (213) 393-0523

Each of the above projects publishes informational brochures, available on request.

B. PUBLICATIONS

ABA, 1974a: ABA Special Committee on Youth Education for Citizenship, *Directory of Law-Related Educational Activities.*

ABA, 1974b: ABA Special Committee on Youth Education for Citizenship, *Bibliography of Law-Related Curriculum Materials, Annotated.*

ABA, 1975a: ABA Special Committee on Youth Education for Citizenship, *Law-Related Education in America: Guidelines for the Future.*

ABA, 1975b: ABA Special Committee on Youth Education for Citizenship, *Media: An Annotated Catalogue of Law-Related Audio-Visual Materials.*

ERS, 1975: Educational Research Service, Inc., 1815 North Fort Myer Drive, Arlington, Virginia 22209, *Codes of Student Discipline and Student Rights.*

LFS, various years: Casebooks, Curriculums, Lesson Plans, and Guides for Teacher Training in topic areas of *Authority, Justice, Privacy, Responsibility, Diversity, Property,* and *Freedom,* Law in a Free Society, 606 Wilshire Blvd., Santa Monica, Calif. 90401.

NYT, 1970: For comment on polls showing negative attitudes toward the Bill of Rights, see *New York Times,* April 16 and 19, 1970.

Popham and Baker, 1970: *Establishing Instructional Goals,* Prentice-Hall, Englewood Cliffs, N.J.

Popham, 1971: *An Evaluation Guidebook,* Instructional Objectives Exchange, Box 24095, Los Angeles, Calif. 90024.